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Supreme Court, U.S.
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No. 01-

IN THE

Supreme Court of the United States

BONNIE HUYOT-RENOIR,

Petitioner,

v.

MARILESE FLUSSER, *et al.*,

Respondents.

ON PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF NEW YORK, APPELLATE DIVISION, SECOND JUDICIAL DEPARTMENT

PETITION FOR A WRIT OF CERTIORARI

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SUPREME COURT, U.S.

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9788

Questions Presented

On November 24th, 1984, in Paris, France, Bonnie Huyot-Renoir and Robert Huyot made an agreement to live together as husband and wife, followed by consummation of the marriage and a holding out to the public as husband and wife, constituting a valid common-law marriage recognized under French Law, translated as "le concubinage notoire." Robert and Bonnie lived as husband and wife in Paris and New York. Robert died in Carmel, New York, April 29th, 1993.

1. Is New York Domestic Relations Law Amendment 11 ch 606 of April 29th, 1933, abolishing the recognition of common-law marriage, recognizing such marriages from other jurisdictions which recognize such marriages as valid, unconstitutional and violative of the Equal Protection Clause of the Fourteenth Amendment of the Constitution of the United States, requiring immediate amendment to recognize all validly contracted common-law marriages, *for the protection of women and children, as a form of family no less than any other,* thereupon requiring the court to declare a valid marriage between Bonnie and Robert, allowing her the right to elect against the Wills of Robert Huyot as the surviving spouse?

2. Does French Law recognize common-law marriage by the cases decided by the European Court of Human Rights, Articles 8 and 14 of the European Convention For the Protection of Human Rights and Fundamental Freedoms, which bind France, the French Civil Codes, and by cases decided by French judges, requiring New York to recognize the common-law marriage between Bonnie and Robert, allowing her the right to elect against the wills as the surviving spouse under EPTL 5-1.1-A?

3. Are the written and oral contractual agreements between Bonnie and Robert enforceable under the promise that "no state may make any law interfering with the freedom to contract", Article 1 § 10 of the Constitution of the United States, under the legal doctrines of Promissory Estoppel, Fraud, Breach of a Confidential Relationship, Constructive Trust, Unjust Enrichment, and cases decided by judges, requiring specific enforcement?

List of the Parties

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The following are the parts in two legal briefs where the Constitutional Questions were raised. There are six more briefs, from 1996 until 2001, where the Constitutional Questions were raised, the decisions the U.S. Supreme Court on common-law marriage, the decisions of the European Court of Human Rights, Articles 8 and 14 of the

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Your Petitioner, In the Matter of Robert Huyot, Deceased, respectfully petitions for a writ of certiori to review the judgement of the Court of Appeals of the State of New York.

OPINIONS BELOW

The opinion of the Court of Appeals, dated November 15th, 2001 (App., infra, p.1) is not yet reported. The opinion of the Supreme Court, Appellate Division: 2nd Department, (App., infra, pp.2-3) is reported at 714 N.Y.S. 2nd 344. The opinion of the Supreme Court, Appellate Division: 2nd Department, on the Motion for Leave to Reargue (App., infra, 25-26) is not reported. The opinion of the Surrogate's Court of Putnam County (App., infra, 4-22) is not reported. The opinion of the Court of Appeals (App., infra, pp.23-24) is reported at 676N.Y.S. 2nd 129, 698 N.E. 2nd. The opinion of the Surrogate's Court of Putnam county (App., infra 24-25) to reopen the case for trial is not reported. The opinion of the Supreme Court, Appellate Division: 2nd Department (App., infra, 26-28) is reported at 666 N.Y.S. 2nd 129. The opinion of the Surrogate's Court of Putnam County (App., infra 29-49) is reported at 645 N.Y.S. 2nd 979.

JURISDICTION

The Court of Appeal entered it's decision on November 15th, 2001 (App., infra, p.1). The jurisdiction of this Court is invoked under 28 U.S.C. § 1257 and 28 U.S.C. §2403 (b). I, your Petitioner, served the Assistant Solicitor General of

New York, each time I raised the unconstitutionality of the New York State Statutes and have served him this writ. (See the List of Parties, p. iii).

A. Statement of the Case

In 1984, I was teaching French Cooking in my own school in Paris, France. On Sundays, I attended church at the American Cathedral in Paris. On Sunday, just before the precession was about to exit, I prayed, saying, "God, I need a husband, can't you do something?" Within a few minutes I was walking to the exit door. A handsome man blocked the door with his arms. He said, "You always run out after church. My name is Robert Huyot. I am the former Chairman of the Inter Continental Hotel Chain. May I invite you to lunch at the Royal Monceau Hotel? I am the President of the Hotel." "Yes", I answered.

Six days later, November 24th, 1984, Robert said, "We can live together as husband and wife." "Alright," I answered. I loved him. Immediately, Robert stood up and went over to a painting he had painted of his home in Camel, New York and I followed him. While looking at me in the eyes, he said, "I haven't given it to anyone in the inheritance yet," implying that he would give it to me.

In December of 1984, we went to stay at the Carlton Hotel in Cannes, and Robert instructed me to introduce myself as Mrs. Huyot and I did. He registered us as Mr. and Mrs. Huyot, always, in the Inter Continental Hotels in France, Vienna, New York, and other hotels around the world. We

introduced each other to the public as husband and wife thereupon created a valid common-law marriage under French and American Law.

In the French Version of Parent's Magazine in 1986, they wrote about my cooking school stating, "she is since many years the wife of Robert Huyot, President of the Royal Monceau Hotel."

In 1985, the maid tried to kill Robert. She stabbed him several times through four rooms. I defended him to the French police charges he was accused of and took care of him through two operations. The maid killed herself before the trial.

On February 12th, 1986, Robert felt that I needed more security and he wrote out a contract in his own handwriting that stated in the event that he died, I was supposed to be given $125,000.00 from his bank account, in priority, before any other distribution was made. The purpose of the money was so that, I could buy two rooms in Paris, to live in as a home.

In the spring of 1989, in New York, Robert promised to give me the same, "as a daughter in the inheritance." Robert and I lived as husband and wife in Paris, France from November 24th, 1984 until August of 1988 and from August of 1988 until approximately November of 1989 in Carmel, New York.

In November of 1989, I found sexually provocative photos of women that Robert had taken. I showed them to him and he said that I was the CIA and that he didn't want the CIA living under his roof. I understood that to mean that he wanted to leave and so to be polite, I did. In the

first week of December we went back together and went to Paris, France, where Robert registered us as Mr. and Mrs. Huyot at Le Grand Hotel from December 20th, 1989 until January 4th of 1990. After the first few days of January, 1990, Robert began to go with other women. Despite numerous attempts at reconciliation, they were to no avail. Robert just told me of all the women he was seeing.

In June of 1991, I went to New York City for a few days. I met Robert for lunch at the Inter Continental Hotel. I told Robert that the money he had given me in 1989 was running out and that I needed money for graduate school. Robert said, "How much do you need?" I said $25,000.00 a year for three years." Robert answered, "Alright, I will give it to you."

Robert never kept any of his promises to me. When the common-marriage began Robert's assets were approximately $1,580,000.00. When I was cast out for other women, his assets were approximately $2,080,000.00.

I relied on the contractual agreement between Robert and myself. I could not envision any problems in the future and was certain that he would be a gentleman and keep his promises to me. All my confidence was bestowed upon him.

Those living state of common-law marriage are in similar circumstances vis a vis those living in formal marriage and deserve Equal Protection of the Law.

I am Bonnie –Huyot Renoir, your Petitioner, representing myself, *pro se*. I am a law student at

the University of London, England. Since November of 1999, I have become ill and am unable to work or go to school. I have had several operations and there are more to come. My goal is that this Court will declare that those living in the state of common-law marriage are in similar circumstances vis a vis those living in formal marriage and deserve equal protection of the law, giving them equal treatment for inheritance or any other purpose.

I entered into a valid common-law marriage, legally recognized in France with Robert Huyot, November 24th, 1984. Sadly, Robert died at home in Carmel, New York, April 29th, 1993.

The New York State Legislature decided to abolish the recognition of common-law marriages on April 29th, 1933, by creating a statute that says: "No marriages shall be valid unless solemnized by:. ." This statute is merely directory not mandatory, exclusive of any other means of effecting the marriage contract, I. Vernier. American Family Law 26 (1931). The New York State Legislature declared that while the doctrine of common-law marriage provides substantial justice in some cases, they feared spurious claims. The New York State Legislature felt the need to change the law which recognized common-law marriages as valid, even though there were only a few or no cases of petitioners making fraudulent claims of common-law marriage for pecuniary or other interests. They added a safety net clause stating that they would recognize common-law marriages from other jurisdictions that recognize

such marriages. The leading case where New York recognizes as valid common-law marriages from other jurisdictions is Shea v. Shea 294 N. Y.909, 63 N.E. 2d 113.

Those living in the state of common-law marriage are in similar circumstances as those in formal solemnized marriage, and therefore are guaranteed Equal Protection of the Law by the Fourteenth Amendment §1 of the U.S. Constitution, which states that "No state . . . shall deny to any person within its jurisdiction the equal protection of the laws."

New York's fear of spurious claims in some common-law marriages, is not a compelling enough interest to override the constitutional guarantees of the Fourteenth Amendment. A classification based on informal/common-law marriage is not so "suspect" as to require that it survive "strict scrutiny". The U.S. Supreme Court requires, "at a minimum, that a statutory classification be at some rational relationship to a legitimate state purpose." 406 U.S. 164, 172

New York Domestic Relations Law Amendment 11, ch 606. Laws of 1933, abolishing the recognition of common-law marriage, invidiously discriminates on the basis of informal/common-law married husband and wives, and as is clearly stated in Trimble v. Gordon 430 U.S. 762, 97 S.Ct. 1459: 52 L.Ed. 2d 31, the "Equal Protection Clause requires more than a mere incantation of proper state purpose. . . the family unit, perhaps the most fundamental social institution of our society". As the U.S. Supreme Court holds that an

illegitimate child deserves equal protection of the law vis a vis a legitimate child, some may call a common-law married family, an 'illegitimate' family, and those living in that family, 'illegitimate'. The illegitimate family must given the same law as the legitimate family, "as a form of family, no less than any other." (Marckx v. Belgium E Ct HRR A31 (1979), 2 European Court of Human Rights). In the eyes of the law, the European Court of Human Rights declared that there must be no distinction between the 'legitimate' and 'illegitimate' family. Marckx v. Belgium, (cited, above). The lower Courts in New York have said in the case before you and others, that, an 'illegitimate' or common-law wife, does not have equal rights with that of a 'legitimate' wife from a 'legitimate' or formally married family.

The case before you will show that French Law recognizes common-law marriage, therefore New York law must recognize the common-law marriage between Robert and myself, allowing me the right to elect against the Wills under EPTL 5.1-1. A. The law in New York abolishing the recognition of common-law marriages with a 'safety net' clause recognizing such common-law marriages from other jurisdictions to be valid is unconstitutional and requires prompt amendment to recognize all validly contracted common-law marriages giving them equal protection of the law.

I raised this constitutional issue many times in the New York Courts below. None of the Courts would address it. Kindly refer to the appendices pp. 49-56, which are quotations from two out of

the eight briefs submitted to the New York Courts raising the Constitutional questions of Equal Protection of the Law and the Freedom to Contract.

The U.S. Supreme Court declares that common-law marriages are to be valid. Firstly, in Meister v. Moore, Supreme Court 196 U. S. 76, 1877, 24 L. Ed. 826, in the case of an alleged marriage of William A. Mowry and the daughter of the Indian Pero. The court held that an informal marriage by contract per verba de praesenti constitutes a marriage at common-law :

"Statutes in many of the States, it is true, regulate the mode of entering into the contract, but they do not confer the right. . . Such formal provisions may be construed as *merely directory*, instead of being treated as destructive of a common-law right to form the marriage relation by words of present assent . . . any marriage regularly made according to the common-law, without observing the state regulations, would still be a valid marriage. . . A statute regulating forms of marriage are *merely directory*, instead of being treated as destructive of a common-law right to form the marriage relation by words of present assent . . . because marriage is a thing of common right, because it is the policy of the state to encourage it."

Secondly, in Carney v. Chapman 38 Supreme Court 449 (1918), the U.S. Supreme Court held that the Supreme Court of Oklahoma was in error not to recognize the common-law marriage of an Indian woman, where there was evidence that it

was customary to disregard solemnization before a judge or preacher. The Court held that the Act of Congress made valid marriages under custom or law, "despite the Cickasaw Act of October 12th 1876, declaring that all marriages should be solemnized by a judge or preacher."

Admittedly, there are no tribes of French people living in the United States, however, French law recognizes common-law marriage by custom and by law. In France, over "two million couples live in the state of common-law marriage, over four million people out of the ten million couples that exist, which is 20%. 229,000 of the 762,407 children born in 1990 in France are from common-law married couples." Les Concubinages= Common-Law Marriage and Cohabitation, by Professor Jacqueline Rubellin-Devichi from the book Liber Abercorum, by Daniel Huet-Weiller, copyright, 1994, Paris, France.

Professor Rubellin-Devichi is my French Law expert witness. She is the Director of the Center of Family Law for the National Center of Scientific Research, Paris France. She is France's number one expert on "common-law marriage = le concubinage notoire (Larousse, 1993, Paris)". The book, Les Concubinages = Common Law Marriage and Cohabitation, is written under her direction as the Directrice of the Center of Family Law, 1986. Professor Rubellin-Devichi, is a Professor of French Family Law at the University of Lyon, France and she represents me *pro bono*. In her sworn affidavit to at the French Court of Appeals for me, submitted to the Surrogate's Court, she

declared, "On the basis of the business principle, enrichment without cause, of the De Facto situation, the common-law wife may use the name of her companion and she can inherit from him. It is true that the rights of succession are raised to 60% and for a formally married wife they can obtain 40%, but that is not proof of the non-recognition of common-law marriage!" (Under French Law). Professor Rubellin-Devichi stated: *"I very solemnly affirm, considering myself an expert in French Family Law, that our law knows two models of conjugality, marriage and common-law marriage, and that common-law marriage has been recognized for a long time in our law . . ."*

The Surrogate tried very hard to not recognize France's recognition of common-law marriage. For example, in quoting Professor Rubellin-Devichi's testimony, he took out the work 'notoire' which was together with the word 'concubinage.' "Concubinage notoire" means "common-law marriage, (Larousse, Paris, 1993)" as was translated by an independent French translator, Ms Jones. The Surrogate changed the translators words from common-law marriage. He removed and replaced the translation with the French word (concubinage) omitting the "notoire," which gives a different meaning. Professor Rubellin-Devichi. stated, "concubinage notoire" throughout her testimony. (See the Record on Appeal, 1996/06720). He purposely changed the words of my expert witnesses's testimony.

The third U.S. Supreme Court case to consider is Travers v. Reinhardt 205 U.S. 423; 27

S.Ct. 563; 51 L. Ed.825. The Court held that, "James Travers and Mrs. Travers who lived with him constantly and openly as his wife for more than eighteen years, were, in law, to be deemed husband and wife at the time of his death, in New Jersey in 1883." The Court quotes from Redgrave v. Redgrave, 38 Maryland, that when parties live together as man and wife and deem towards each other as such, and are known in society among their friends and relations to have that status, the *law will presume that they are legally married.*

The decisions of the U.S. Supreme Court are attractively put, and thereupon, there is ample authority that a lawful marriage is in fact inferred between Robert and myself.

As the New York Domestic Relations Law stands, New York will recognize valid common-law marriages entered into in jurisdictions that recognize such marriages, therefore we must turn to French Law.

France's Recognition of Common-Law Marriage.

France is bound by the decisions of the European Court of Human Rights. The European Court of Human Rights has declared in Marckx v. Belgium E Ct HRR A31 (1979) 2 European Court of Human Rights 330, "By guaranteeing the right to respect for family life, Article 8 *presupposes the existence of a family*. Article 8 makes no distinction between the 'legitimate' and the *'illegitimate'* family . . . such a distinction would not be concerned with the word 'everyone' and this is confirmed by Article 14 with its prohibition in the enjoyment of the rights and freedoms

enshrined in the Convention, "of discrimination . . ." The Court further added that, "an *'illegitimate'* family is equally protected by Article 8. . . *"as one form of family no less that others."*

In The European Convention for the Protection of Human Rights and Fundamental Freedoms Articles 8 and 14 are relevant to the case before you.

Article 8

1. Everyone has the right to respect for his private and family life, his home and his correspondence.
2. There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety, or the economic well being of the country, for the prevention of disorder of crime, for the protection of health or morals or for the protection of the rights and freedoms of others.

Article 14

The enjoyment of the rights and freedoms set forth in this Convention shall be secured without discrimination on any ground such as sex, race, colour, national or social origin, association with a national minority, property, birth or other status."

French Law recognizes common-law marriage by the decisions of the European Court of Human Rights, Articles 8 and 14 of the European Convention For the Protection of Human Rights

and Fundamental Freedoms, by the French Civil Codes and cases decided by judges. The Surrogate held that Robert and I lived in the state of a validly contracted common-law marriage, thereupon it is important to translate into French properly, as the *concubinage* became *notoire*.

In Les Concubinages, (cited above), "Common-law marriage made it's first entrance by the civil law, Article 340 by the law of November 16, 1912, then in Articles 283 and 285-1, with the law of July 11, 1975, then divorce reform in the law of December 1981, the speaking about taxes on large fortunes in the law of June 22, 1982, about the rights and obligations of renters, without counting the various decrees and answers from the various ministries of justice."

Article 340 entered into law in France, November 16th, 1912, Part 4 says: There is a *common-law marriage* in the sense of Article 340 of the Civil Code when during the legal period of conception, there existed between the father and the mother, continued, stable relations, known by those persons around them.

Article 283 and 285-1, July 11, 1975 Article 283: Maintenance or alimony ends if one of the spouses creates a new marriage. Maintenance or alimony also ends if the spouse lives in the state of *common-law marriage*. Article 285-1. If the local servant of lodgings of the family belong personally to one of the spouses the judge can consider giving the lease to the other partner (spouse): It is put to an end if this person lives in the state of *common-law marriage*.

French Common-Law Marriage Cases

Case Law of June 12th, 1984

In this case, gift given to the common-law wife to assure maintenance of her and the child they had in common at the death of her husband. The judge declares valid, the common-law wife had envisioned ceremonial marriage before his death.

Case Law of November 19th, 1974

Liberality consented to a common-law wife particularly deserving, who after having helped the common-law husband become well after a serious heart attack, helped him in his work and even went to see his clients for him, herself, the liberality is valid as a necessity of recognition. She may have his salaries and profits.

Case Law of May 19th, 1982

Instruction D.G.I. May 19th, 1982, Rep. Defrenois 1982, p. 710 The proceeding questions states that the administration interpret "in the permeated spirit a jurisprudence of the Court of Cassation going back to 1924 and 1925 that considers that *there is a common-law marriage when two people who live publicly as husband and wife, that is to say, live together and have sexual relations, followed by procreation or not.*

Decision of the Court of Paris, October 14th, 1985 The Court of Paris reformed a previous judgment, on the 14th of October, 1985, in deciding that *common-law marriage is a non-solemnized form of marriage between two individuals of different sex who live together as husband and wife, founded on the fundamental law attached to the human person.* The French

original versions of the cases cited above are in the Record on Appeal 1996/06720, page 134.

It is beyond any doubt that France recognizes common-law marriage as a lawful form of marriage. Thereupon, New York must recognize the marriage between Robert and I, as valid, allowing me the right to elect against the Wills, under New York's Estates, Trusts and Powers Law 5-1.1.A.

On February 12th, 1986, Robert wrote out in his own handwriting, a bilateral written contractual agreement in French, stating that in the event that he died, I was to be given the sum of $125,000.00 from his bank account, in priority, before any other distribution was made, because I shared his life with him. Robert and I both signed the agreement.

When Robert and myself had reconciled in the first week of December, 1989, after I had been cast out of our New York home for other women in late November of 1989, we planned to go to France together within the next few days. Robert, without my knowledge or consent, unilaterally sent instructions to his bank in Switzerland, ordering them not to honor the written agreement. He told them not to give me the $125,000.00 as we had agreed upon, and both signed. The cancellation letter that he wrote to his bank was dated December 15th, 1989, and he stated in the letter, that I he was canceling it because I had broken my relations with him. This is untrue. In fact, it is evidenced that Robert registered us as Mr. and Mrs. Huyot at Le Grand Hotel in Paris, France

from December 20th, 1989 until January 4th, 1990, (Record on Appeal, Number 96-06720, pp. 94-98).

The written agreement of February 12th, 1986 is a bilateral written contractual agreement of which there was valuable consideration and performance, to continue to be *Robert's full-time common-law wife, perform housewifely duties, forgo a regular employment and suffer prejudice as a common-law wife*.

In March of 1999, I telephoned Professor Jean Carbonnier, the eminent senior dean of French Family Law in Paris, France and Maitre (Lawyer) Henri Aubin, a DESS in Notarial Law and an author in articles about common-law marriage in France.

Both Professors of French Family Law, strongly told me, that for French Law, they believed that it is the law of New York that applies to the written agreement, because New York was where Robert was resident and where he died. Thereupon, in this statement, I will just refer to New York law. If one would like an explanation of French Law regarding the written agreement, it is in the Brief of Petitioner-Appellant, Docket Number 1999/09956, pages 23-36.

The Supreme Court, Appellate Division: 2nd Department held that the Appellant erroneously contends that the letter of February 12th, 1986, written by decedent to put at the disposition $125,000 in case he died unexpectedly, was a gift. This was not my legal argument. They held that Robert retained the power to revoke the written agreement at will. In my opinion, this is incorrect.

I submitted that the written agreement is a bilateral written contractual agreement that is unilaterally irrevocable requiring specific enforcement.

In April of 1989, Robert promised to "leave me the same as a daughter in the inheritance," in the New York home. I relied on this promise, and the other ones, to my detriment. I did not request a formal solemnized marriage, which would have given me the automatic right to elect against the Wills as the surviving spouse. This promise and the others, are enforceable under the legal doctrine of promissory estoppel and cases decided by judges.

The second express oral contract between Robert and I was in June of 1991, in the Inter Continental Hotel, New York City, where Robert promised to give me $25,000.00 a year for three years, so that I could attend graduate school. I believe that Robert fraudulently made this agreement and that he never intended to send me the money. I relied on this promise to my detriment. I began making applications for graduate school and did not seek employment.

Additionally, there was a partnership agreement between Robert and I to be partners in life, as evidenced in the written agreement of February 12th, 1986, written by Robert which says, "who shares my life here." Robert and I entered into an implied oral contract on November 24th, 1984, where he himself implied that he would give me the Carmel, New York home in the inheritance. There are two express oral

contractual agreements between Robert and myself. The first one is in the Carmel, New York home, in the spring of 1989. Robert promised to "leave me the same as a daughter as the inheritance." The second express oral contract was in New York City, June of 1991, where Robert promised to give me $25,000.00 a year for three years, primarily for inheritance purposes.

The two oral contracts between Robert and myself, are enforceable as a matter of law under the legal doctrine of promissory estoppel, and the exceptions to the New York Statute of Fraud, i.e. Admission of Contract, Fraud, Breach of a Confidential Relationship, Unjust Enrichment, *inter alia.* The Statute of Frauds may not be relied upon as a bar to the oral contracts between Robert and myself. *The Statute may not be used as an instrument of fraud,* and the doctrine of promissory estoppel and the above exceptions, require performance of the promises. Robert made fraudulent misrepresentations to me, consisting of not intending to keep any of the promises he made to me, inducing the conduct and assent of myself to live with him in a common-law marriage, instead of a formal solemnized marriage, upon the reasonable belief that I would be taken care of according to the agreements. One also must consider in the present case, the inequality of the background, education, and experience between Robert and myself. Robert had a degree in Hotel Management and a French Law degree. I had a B.A. in French and a Certificate of French Cooking from L'Ecole Cordon Bleu de Paris. Robert, as a

French lawyer, had a special knowledge of the law, whereas I had none. *Because of the confidential relationship between us, I did not seek independent legal advice*.

B. The New York Courts ignored the Equal Protection Clause of the Fourteenth Amendment, the decisions of the European Court of Human Rights, Articles 8 and 14 of the European Convention, the French Civil Codes and cases decided by French judges in the common-law marriage part of the case. In the contractual issues part of the case they ignored Article 1 §10 of the Constitution, decisions of the New York Court of Appeals which hold that oral contracts between unmarried couples must be enforced, the exceptions to the Statute of Frauds that the contractual agreements between Robert and myself fell under, requiring specific enforcement of them.

The case before you began on or about April 8th, 1994. I was represented by Mr. Donald A. Klein in the Surrogate's Court until June of 1996. I translated French Law for many hours and gave it to him to include in his Memorandum of Law. He did not put them in. His memorandum was only seven pages long. In addition, he forgot to argue the four contractual issues part of the case. Thereupon, even though the contractual agreements were in the original petition, (except for the implied contract to leave me the Carmel, New York home, where it was requested to the Surrogate's Court to add since it was omitted by error). Because Mr. Klein failed to argue the four

contractual issues part of the case, the Surrogate only ruled on the French common-law marriage.

In his Decision, the Surrogate wrote that neither side had given him adequate explanation of French Law regarding common-law marriage. I asked Mr. Klein why he did not put in the French Law that I had translated in his memorandum and he said that he did not want to make the brief too long, and bore the people reading it.

The Surrogate wrongly held that France does not recognize common-law marriages the same as those states in the U.S. that recognize such marriages, and therefore I had no right to elect against the Wills of Robert Huyot. The Surrogate and the Supreme Court, Appellate Division: 2nd Department found the case, In the Matter of Jenkins 506 N.Y.S. 2d 1009 (Surrogate's Court, 1986) to be the controlling precedent in the case before you.

Ms. Ergon and decedent entered into a common-law marriage in Israel where such marriages are known as 'reputed marriage' and are recognized. Under Israeli Law, common-law married spouses have the right of inheritance. The Surrogate held that Israel does not recognize common-law or 'reputed marriage' the same under Israel law as those states in the U.S. that recognize common-law marriage, dismissing the common-law wife's claim. The Surrogate believed that in the states in the U.S. that recognize common-law marriages, that they are exactly the same as formal marriages and require a divorce decree or death for termination. *This is untrue*.

Each state of the 10 states in the United States that recognize common-law marriage have variations in the law that pertain to common-law marriage, from state to state, and they are not the same laws as that of formal marriages. For example, in Utah common-law marriages began to be recognized in 1989. In Utah law, common-law marriage arises when a couple make an agreement to live together as husband and wife, followed by consummation of the marriage and a holding out to the public as husband and wife. There are no time period requirements required for recognition. However, different than any of the other states in the United States that recognize common-law marriages, *if the couple separate, they must apply to the court for a common-law divorce within twelve months of their separation, otherwise the Court will not recognize it*. In most states or countries that recognize common-law marriage, a couple may apply to the courts for marital dissolution or rights of succession, or the couples may work it out among themselves. If one or both of the spouses enter into another marriage, they may do so without the fear of bigamy charges. This shows that *there are differences between common-law marriage and formal marriages in the states in the United States that recognize such marriages, just as in France*. Thereupon, the Surrogate wrongly decided the Jenkins case. The common-law wife was entitled to elect against the Will of her deceased husband. She was denied equal protection of the law vis a vis a formally married wife. The Jenkins case is to be distinguished

from the case before you. Firstly, Israeli Law is religious, while French Law is civil. Additionally, France is bound by the decisions of the European Court of Human Rights and Articles 8 and 14 of the European Convention, the French Civil Codes and cases decided by French judges. Israel is not a member of the European Union and is not bound by their laws, which require equal treatment for a 'illegimate' family, including an 'illegitimate wife' with that of a 'legitimate' family' or formally married wife, for inheritance or any other purpose. The Jenkins case is to be distinguished from the case before you. It is not a controlling precedent.

The Supreme Court Appellant Division: 2nd Department upheld the decision of Surrogate Braatz, quoting from the Jenkins case and stating that the Surrogate properly concluded that there is a distinction between "marriage" and "concubinage". The word "concubinage" is incorrect, my marriage was elevated to "concubinage notoire = common-law marriage (Larousse, Paris, 1993)", as I was a "concubine or concubine notoire = a common-law wife, judicially recognized, Larousse, Paris, 1993)". There are small distinctions between formal and common-law marriages in all of the jurisdictions in the U.S. that recognize such marriages i.e., between Texas and Utah, and with France, but that does not mean that they do not recognize common-law marriage to be a legal marriage. The 2nd Department goes on to say that:

"While the petitioner may enjoy some rights under French law . . . and while some of these rights may be similar or the same as those of married persons in France, these rights do not give the parties the status of husband and wife. . . (see *Matter of Jenkins*. . .)". Common-law married spouses are in similar circumstances as those living in formal marriage and deserve equal protection of the law for inheritance or any other purpose. The decisions of the U.S. Supreme Court regarding common-law marriage, the decisions of the European Court of Human Rights, Articles 8 and 14 of the European Convention and French Law, (supra) require New York to declare a lawful marriage between Robert and myself.

I raised the unconstitutionality of New York Domestic Relations Law as violative of the Equal Protection Clause to the Supreme Court of New York, Appellate Division 2nd Judicial Department December 23rd, 1996 when I took over the case representing myself, *pro se,* from June of 1996 until the present time. (See the appendices pp. 49-56). I appealed to the Court of Appeals on all issues, including the contractual issues part of the case, also raising the constitutional question of Equal Protection of the Law, (See Appendices pp. 49-56) and there are 6 more Briefs after that where the questions were raised along with European Court of Human Rights Law, and The Universal Declaration of Human Rights, Article 16, No. 3, "The family is the natural and fundamental group unit of society and is entitled to protection by society and the state."

The Court of Appeals denied the Motion for Leave to Appeal because of the non-finality of issues presented, May 5th, 1998. The Surrogate and the Appellate Division, 2nd Department had not ruled on the contractual issues part of the case. I then filed a Petition for Rehearing to the Surrogate's Court and the Surrogate reopened the case, ordering a trial on the contractual issues part of the case. (See the appendices, pp. 24-25)

Respondents agreed to all of the facts as I had stated as true, thereupon, they filed a Motion For Summary Judgment and I filed a Cross-Motion for Summary Judgment in the Surrogate's Court.

In the case before you, there are four contracts.

The implied contract to leave me the Carmel, New York home in the inheritance is valid under the legal doctrines of unjust enrichment, promissory estoppel, constructive trust, and the case precedent of McCullon v. McCullon, Supreme Court of New York 96 Misc. 2d 962; 410 N.Y.S. 2d 226; 1978 N.Y. Misc, LEXIS 2713. Regarding the two express oral contracts, firstly, there is the promise by Robert to "leave me the same as a daughter in the inheritance", and secondly, to give me $25,000.00 a year for three years for educational purposes. I introduced the Constitutional questions of the Equal Protection Clause, the U.S. Supreme Court cases of Common-Law Marriage, the European Court of Human Rights decision of Marckx v. Belgium, (cited, above), Articles 8 and 14 of the European Convention. Article 1 § 10 of the Constitution which says that no State shall pass any laws

interfering with the freedom to contract to the Surrogate's Court of Putnam County and the Supreme Court, Appellate Division: 2nd Department, and to the Court of Appeals twice, from 1996 until 2001, as one may see in the entire record. None of the courts would accept any of my legal arguments. *En faite*, they ignored them.

The Surrogate and the Supreme Court, Appellate Division: 2nd Department held that the written agreement between Robert and I was a testamentary instrument that could be cancelled upon Robert's whim. Then, both Courts held that regarding the two express oral contracts, they were unenforceable because they needed to be in writing according to New York Estates, Powers and Trusts Law 13-2.1:

(a) Every agreement, promise or undertaking is unenforceable unless it or some note or memorandum thereof is in writing and subscribed by the party to be charged therewith, or by his lawful agent, if such agreement, promise or undertaking:
(b) Is a contract to take a testamentary provision of any kind.

New York General Obligations Law Section 5-701:

a. Every agreement, promise or undertaking is void, unless it or some note or memorandum thereof be in writing, and subscribed by the party to be charged therewith, or by his lawful agent, if such agreement, promise or

undertaking: 1. By its terms is not to be performed within one year from the making thereof . . .

The Surrogate believed that the promises made between the two unmarried cohabitants as in Morone v. Morone, 50 N.Y. 2d 481 (1980), where the New York Court of Appeals found that *an express oral agreement between two unmarried persons must be enforced*, were not the same as the contractual agreements between Robert and I, stating that in Morone, they were partnership agreements, implying that living as husband and wife in the state of common-law marriage is not a partnership. This is wrong because any marriage is a form of a partnership, and as Robert wrote in the written agreement, "she shares my life here."

The Surrogate and the Supreme Court of New York, Appellate Division: 2nd Department, held that the Statute of Frauds would not allow the oral contractual agreements between Robert and myself to be enforced, even though they fall into the following exceptions, in McKinney's Consolidated Laws of New York, pp. 305-308, "Admission of Contract. . .; Unjust Enrichment. . .; Fraud, which is where the contracting party makes statements the party never intended to carry out, Constructive Trust, abuse of a confidential relationship, a partnership agreement or joint contract and the legal doctrine of promissory estoppel.

In November 29th, 1999, I made a Motion for Leave to Reargue to the Supreme Court, Appellate Division, 2nd Department regarding the French

common-law marriage part of the case, presenting the Constitutional question of Equal Protection of the Law, the U.S. Supreme Court decisions on common-law marriage, the decisions of the European Court of Human Rights, Articles 8 and 14 of the European Convention, how to properly interpret French Law, the French Civil Codes, French common-law marriage cases, Marriage by Presumption and Marriage by Equitable Estoppel. The Supreme Court denied the Motion For Leave to Reargue. I appealed to the Supreme Court on the contractual agreements to be enforced March 6th, of 2000. In the brief of Petitioner-Appellant, p. 55, I again raised the Constitutional question of Article 1 § 10 of the which provides that "no state shall . . . pass any . . . law impairing the obligation of contract." I submitted New York case law where the New York Court of Appeals upheld oral contracts against an estate, for example in Schell v. Plumb, the Court of Appeals of New York, 55 N.Y. 592; 1874 N.Y. Lexis 49, In the Matter of Gordon, Court of Appeals of New York (1960) 8 N.Y. 2d 71 and Morone v. Morone. Court of Appeals of New York 50 N.Y. Lexis 2392; 429 N.Y.S. 2d 592. *inter alia.*

The Supreme Court, Appellate Division: 2nd Department erroneously upheld the Surrogate's decision on the contractual agreements. The Court held that the written agreement was a testamentary instrument and could be cancelled upon Robert's whim and that the oral contracts needed to be in writing to be enforceable. They

would not rule on the implied contractual agreement.

I appealed to the New York Court of Appeals on all issues, the French common-law marriage and the contractual agreements, again raising the fact that New York Domestic Relations Law Amendment 11 ch 606, April 29th, 1933, is unconstitutional, and violative of the Fourteenth Amendment of the Constitution's Equal Protection Clause. I summarized the U.S. Supreme Court cases that recognize common-law marriages and wrote a Chronology of Justice and Injustice in Common-Law Marriage cases since 1809. I gave the Court relevant decisions of the European Court of Human Rights, Articles 8 and 14 of the European Convention which bind France, French Civil Codes and French common-law marriage cases. Furthermore, I submitted that the contractual agreements require specific enforcement under the Article 1 § 10 of the Constitution of the United States, New York case law and the exceptions to the Statute of Frauds. The Court of Appeals declined discretionary review November 15th, 2001.

B. This Case Is Important. "We Need To Improve The Law!" U.S. Supreme Court Justice Breyer.

In France, there was a physically handicapped woman who was married and had a child. The husband abandoned the woman and she was taken in by a gentleman who took care of her and

her child for thirty-six years. They had two children together. She never obtained a divorce decree from the first husband. Her common-law husband died, and in a wrongful death suit, the Court of Cassation in 1972, refused to consider the adulterous character of the liasion as a bar, relying on the technical ground that it was the partie's against her, their burden to prove that the former marriage still exists. Glendon p. 94 They could not, of course, and the judges declared that they had a valid common-law marriage, giving her everything in his estate. This is a case of true justice and pulls at the heart strings. (See the Brief of P.A. 1996/06720)

When New York recognized common-law marriages before 1933, the Court made decisions that gave the common-law wife equal protection of the law vis a vis that of a formally married wife. An interesting case is Hynes v. McDermott 91 N.Y. 1883. The facts are similar to my own case. Mr. Hynes was a wealthy New Yorker and he entered into a common-law marriage in France with a widow. Mr. Hynes died in New York and his children from a former marriage went all the way to the New York Court of Appeals stating that she had no rights. The New York Court of Appeals held that a valid common-law marriage was entered into in France and therefore, New York law would recognize it as valid. The same Court would not recognize my French common-law marriage.

In Utah, where common-law marriages are recognized, in Tom Green's case, the case of the

famous polygamist, the prosecutors used Utah's common-law marriage statute to declare that he is legally married to five wives at the same time, sentencing him to felony bigamy. In this case, the wives were given equal protection of the law vis a vis formally married wives.

The U. S. Supreme Court has the opportunity to make a landmark decision, stating that all valid common-law marriages deserve equal protection of the law vis-a vis formal marriages under the Fourteenth Amendment and that the contractual agreements between common-law spouses must be enforced, *not for myself alone and not for the State of New York alone, but as a precedent for the United States with worldwide influence*.

Wherefore, I respectfully request that the Court grant this petition.

Dated : February 4th, 2002

Yours very respectfully,

Bonnie Huyot-Renoir

Bonnie Huyot-Renoir
Petitioner, *pro se*
187 East 600 North
Midway, Utah 84049
Tel. (435) 654-1627

APPENDIX

APPENDIX A

State of New York
Court of Appeals

DECISION November 15, 2001

Motion for leave to appeal denied.

State of New York
Court of Appeals

A motion for leave to appeal to the Court of Appeals in the above cause having heretofore been made upon the part of the appellant herein and papers having been submitted thereon and due deliberation having been thereupon had, it is

ORDERED, that the said motion be and the same hereby is denied.

"s/ Stuart M. Cohen".
Clerk of the Court

APPENDIX B

SUPREME COURT OF THE STATE OF NEW YORK
APPELLATE DIVISION : SECOND JUDICIAL DEPARTMENT

1999-9956 DECISION & ORDER

In the Matter of Robert Huyot, deceased.
Bonnie Huyot-Renoir, appellant, v Marilese Flusser, et al., respondents-respondents, et al., respondent.

Bonnie Huyot-Renoir, Midway, Utah, appellant, *pro se.*

Vedder Price Kaufman & Kammholz, New York, N.Y. (Patricia Anne Lind and Edward F. Campbell of counsel), for respondents-respondents.

In a proceeding, *inter alia,* to recover money allegedly owed to the petitioner by the decedent under purported written and oral contracts, the petitioner appeals, as limited by her brief, from so much of an order and decree (one paper) of the Surrogate's Court, Putnam County (Sweeney, S.), dated September 23, 1999, as dismissed the petition.

ORDERED that the order and decree is affirmed insofar as appealed from, with costs payable to the respondents-respondents by the appellant personally.

The appellant erroneously contends that a letter dated February 12, 1986, written by the decedent directing his bank to "put at the disposition" of the appellant the sum of $125,000 "in case [he] died unexpectently [sic]" was a gift. The letter did not constitute a gift to the appellant because the decedent did not intend to transfer any present interest, but, rather, intended the letter to have no effect until after his death (*see, Gruen v Gruen* 68 NY2d 48, 55). The decedent therefore retained the power to revoke at will the instructions contained in the letter, which he did pursuant to a subsequent letter dated December 15, 1989. Moreover, the alleged oral promises made by the decedent to the petitioner are unenforceable pursuant to EPTL 13-2. 1(a)(2) and General Obligations Law section 5-701(a)(1) (*see, Baron v Jeffer,* 131 AD2d 411). Accordingly, the Surrogate's Court properly dismissed the petition.

RITTER, J.P., FLORIO, H. MILLER and FEUERSTEIN, JJ., concur.

ENTER:

James Edward Pelzer
Clerk

October 23, 2000

APPENDIX C

(In the following DECISION by the Surrogate's Court, several names were spelled incorrectly, including some of the respondents and the witness. I correct the spelling of their names. Your Petitioner, Bonnie Huyot-Renoir)

SURROGATE'S COURT : STATE OF NEW YORK
COUNTY OF PUTNAM

IN THE MATTER OF THE APPLICATION OF
BONNIE HUYOT RENOIR, Petitioner, for Determination of her Claims and her Rights.

DECISION & ORDER
FILE No. 171/93

BRAATZ, S.

There are several applications pending in the above-captioned case. After carefully reviewing the papers submitted, the file maintained by the Surrogate's Court Clerk, and the applicable law, they are disposed of as follows.

PETITIONER'S MOTION TO COMPEL
ANSWERS TO FIRST AND SECOND
SET OF INTERROGATORIES.

Petitioner, BONNIE RENOIR, has served two sets of Interrogatories on the various Respondents and now makes application to compel responses other

than those already given pursuant to Section 3124 and 3126 Civil Practice Law and Rules. In response, Respondent Giselle Huyot, has submitted an Affirmation by her attorney, and Respondents MARILISE FLUSSER, SUSAN MATTHAU, and NICOLE STEPHENSON have submitted an Affirmation in Opposition again through counsel. The Court has reviewed both sets of propounded Interrogatories, as well as the responses, and finds that the Answers as given are adequate and any further responses are unnecessary since the items requested are largely either outside the scope of discovery (Section 3101 Civil Practice Law and Rules) or within the knowledge or control of the Petitioner herself. Accordingly, the Motion to Compel further answers is hereby denied.

PETITIONER'S MOTION FOR LEAVE TO AMEND PETITION

Pursuant to Section 305(b) Civil Practice Law and Rules, the Petitioner makes application to amend the Petition filed on or about August 8, 1994, to include another claim concerning an alleged implied oral contract between the Petitioner and Decedent to leave the Petitioner a residence in Carmel, New York, upon his death. Petitioner asserts that the Respondents would not in any way be prejudiced by this amendment because this particular claim was contained in her Notice of Election by Surviving Spouse, and several other documents filed by her in and

around 1994 as well as in the Pre-trial Memorandum of Law the Petitioner filed on August 26, 1998.

Additionally, the Petitioner wants a change in one of the claims already contained in the Petition to the effect that an oral promise made by the decedent to make her the Executrix of his Estate was made "in early 1985 in Paris, France, not in April of 1989 in New York, as paragraph 18 in the original Petition states." She indicates that the earlier version placing the oral promise in New York was incorrect.

Finally, the Petitioner asks that her name be changed in the Petition and in all other documents from "Bonnie H. Renoir, to Bonnie Huyot-Renoir." She indicates that her name was legally changed in the State of Utah on or about October 16, 1996, and has appended a copy of the Order of Name Change, as Exhibit G.

The Respondents have not put in any opposition for any of these claims for relief.

Section 3025(b) Civil Practice Law and Rules allows a party to amend his Pleadings, "at any time by leave of Court or by Stipulation of all parties. Leave shall be freely given upon such terms as may be just including the granting of costs and continuances." Generally, if the amendment seeks to add new facts to the case, a Court is more likely to find that there is prejudice to the opposing party than if an additional theory is advanced. While a delay in making such application will not necessarily preclude the relief sought, unexplained delay together with prejudice

to the opposing party, such as having to conduct additional discovery, when discovery at this juncture is supposed to be complete, will be sufficient to allow a court to deny an application to amend a Complaint to include an additional cause of action.

Accordingly, Petitioner's application to change the situs of the alleged oral promise from New York in a given year to Paris, France, in a different year, substantially changes the facts alleged and would result in undue prejudice to the Respondents. Indeed, there could be additional conflicts of laws issues which the Petitioner does not even address. This branch of Plaintiff's application is, therefore, denied. Similarly, adding an entirely new claim concerning an alleged oral promise to convey real property in Carmel, New York would be unduly prejudicial. This branch of Petitioner's Motion is also denied.

Finally, the Petitioner's application to have the name used in the Petition and other additional pleadings changed to read "Bonnie Huyot-Renoir" from "Bonnie H. Renoir" is hereby granted. Hereafter, the Petitioner's name shall be indicated as Bonnie Huyot-Renoir as evidenced by the Order of Name Change she had appended as Exhibit G to this application.

PETITIONER'S MOTION FOR AN EXTENSION OF TIME

This application has been rendered moot, and is hereby denied. The Petitioner originally

sought additional time within which to respond to the Respondent's Motion for Summary Judgment, to be dealt with below. That application had been opposed by Respondents, however, the Court allowed the Petitioner additional time as a matter of fact within which to respond to the motion and such response has been received.

RESPONDENT'S MOTION FOR SUMMARY JUDGMENT AND PETITIONER'S CROSS-MOTION FOR SUMMARY JUDGMENT

FACTUAL BACKGROUND

Three of Petitioner's claims remain after this Court's earlier dismissal of the Petitioner's Application to Elect Against the Will as a Surviving Spouse.

First, the Petitioner claims that on February 12, 1986, the Petitioner and the Decedent entered into a written contract whereby "it was agreed that Petitioner would continue for the time being as decedent's full-time wife, and in partial return, when decedent died, Petitioner would receive ONE HUNDRED AND TWENTY-FIVE THOUSAND ($125,000.00) DOLLARS from Decedent's Bank Account Number 2...." (Page 3 Petition of Bonnie Huyot-Renoir, dated March 29, 1994). The document containing this alleged written contract is a letter directed to the Decedent's bank, signed by the Decedent, and also signed by the Petitioner. After the salutation to the decedent's banker, the letter says: "By measure of precaution, I send you

this letter to ask you to please, in case I die unexpectedly, to put at the disposition of Ms. Bonnie Renoir, who lives with me at my address in Paris, the sum of one hundred and twenty-five thousand U. S. dollars. This sum should be given in priority before all other distribution, from the Account Number 2. I have no reason to think that something will happen to me, but it is about a measure of protection for someone who shares my life here. This letter cancels that letter which I sent to you dated the 6th of December, 1985." (Respondent's Exhibit A to Motion for Summary Judgment, translation of letter by Robert Huyot, dated February 12, 1986].

Thereafter, and on or about December 15, 1989, it appears that the Decedent wrote a letter to the same banker indicating the following: "In reference to my letter of February 12, 1986, of which a copy is adjoining, I would like to ask you to cancel totally the instructions given this letter in favor of Bonnie Renoir."

"The instructions to reserve a sum of one hundred and twenty-five thousand dollars U.S. at my death, in priority, are null and void. All the preceding instructions that you have received in favor of Bonnie Renoir are equally null and void."

"I would like to add this letter to the file to avoid a misunderstanding on the part of Ms. Bonnie Renoir, who broke her relations with me." (Ibid, Exhibit B).

The letter is signed by the Decedent, and contains the following post-script: "Bonnie Renoir has already received to this date sums largely

exceeding this mentioned in my letter of February 12, 1986." (Ibid). The Bank confirmed the Decedent's instructions by letter dated August 21, 1992. (Exhibit C, Respondent's Motion for Summary Judgment.)

Petitioner claims that in exchange for the Decedent's "promise" to pay to assure that she receive a hundred and twenty-five thousand dollars upon his death, she "impliedly promised that she would continue to be decedent's full-time common-law wife, perform housewifely duties, forego regular employment, and for the time-being forego a solemnized marriage and suffer prejudice as a common-law wife." (Page 12, Petitioner's Memorandum of Law, dated April 15, 1999).

The Petitioner's second claim concerns a series of alleged oral promises to, respectively, "(give) Petitioner the same inheritance as a daughter, and...to make Petitioner Executrix of his Estate." (Petition, Page 4). That promise was allegedly made in April 1989, in New York. In exchange, the Petitioner "would continue for the time being as Decedent's full time wife." (Ibid).

Finally, in June, 1991, the Decedent promised her "TWENTY-FIVE THOUSAND ($25,000.00) DOLLARS per year for three years primarily for educational purposes." (Ibid). In support of the second oral promise, the Petitioner has appended the Affidavit of a ROBERT VON KUEFSTEIN, who indicates that "one evening in early June of 1991, I picked up Miss Huyot-Renoir to go dancing at the restaurant and dancing establishment, "Café Society." That evening she

told me that she was happy and relieved because she had seen her husband, Robert Huyot, from whom she was separated, that day for lunch and he had promised her money. She stated that she was glad for she ""did not have to worry about money any more." (Affidavit of ROBERT VON KUEFSTEIN, dated March 30, 1999, Petitioner's Exhibit A in support of Cross-Motion for Summary Judgment).

DISCUSSION AND CONCLUSIONS OF LAW

What is a contract? It is an agreement whose terms are understood by both parties to require either an act, or a promise to act, or a forbearance, in bargained for exchange for an act, or promise, or forbearance. "A contract is said to be 'express' when it has been stated in oral or written words...." Murray on Contracts, Chapter 1, Section 9, page 14 (2d Edition, 1974).

The terms of a contract must be definite. See, generally, Sun Printing and Publishing Association v. Remington Paper and Power Company, Inc., 235 N.Y. 338 (1923). Terms in a contract are sufficiently definite "if they provide a basis for determining the existence of a breach and for giving an appropriate remedy." Restatement of Contracts, Second, Section 33 (2). At a minimum, an agreement must cover: One, the parties to the contract; two, the subject matter of the contract; three, the time for the performance; and four, the price. The Courts may supply a missing term where the parties intend to leave the

term to "reasonable implication;" where the parties have agreed that certain terms are to be determined by future mutual agreement; or there has been performance curing the indefiniteness.

A promissor has to commit to something. A promisee has to experience a legal detriment and there must be an existing consideration. If there is no consideration an "illusory contract is created. There are three conditions which must be met to show that a particular promise is supported by consideration. The promisee must suffer a legal detriment, that is, he must either do or promise to do something he is not legally obligated to do, or otherwise circumscribes his liberty. The "detriment" must induce the promise, that is part of the promissor's motive in making the promise is that he wants to exchange his promise for the promisee's detriment. The promise must induce the detriment, i.e., the promisee must suffer the detriment at least in part because of the promise. Allegheny College v. National Shatawkwa County Bank, 246 N.Y. 369, (1927); Murray on Contracts, Chapter 3, Section 73, pages 145-146 (2d Edition, 1974).

Generally, a promise to make a gift will not be enforceable because it lacks bargained for consideration.

In Morone v. Morone, 50 N.Y. 2d, 481 (1980), the Court of Appeals held that courts could entertain a claim based upon an alleged oral partnership agreement by which it was agreed that the plaintiff would furnish domestic services and that defendant would have full charge of business

transactions and provide for the plaintiff in accordance with his earning capacity. Plaintiff there claimed that the "net profits from the partnership were to be used for and applied to the equal benefit of plaintiff and defendant....[and that] defendant commanded that...[the plaintiff] not obtain employment or he would leave her...." Relying on the notion that New York Courts "have long accepted the concept that an express agreement between unmarried persons living together is as enforceable as though they were not living together...(citations omitted) provided only that illicit sexual relation were not "part of the consideration of the contract."...(citations omitted), the Court of Appeals recognized the plaintiff's ability to at least attempt to prove her case. At the same time, however, the Court of Appeals dismissed that Plaintiff's first cause of action alleging an implied in fact contract to divide earnings and assets based on the relationship of this unmarried couple who had lived together. Additionally, the Court noted that there was "no statutory requirement that such a contract as Plaintiff here alleges be in writing (c.f. General Obligations Law, Section 5-701, (a), paragraphs one and three)." Morone v. Morone, supra. As interpreted since, the holding in Morone has been seen to require that there be "facts sufficient to establish that a 'partnership' has been established between the parties. Even if the Plaintiff had set forth facts sufficient to establish an oral partnership agreement, the agreement would be unenforceable pursuant to General Obligations

Law, Section 5-701 (a)(l), which requires a writing if the agreement "by its terms is not to be performed within one year from the making thereof or the performance of which is not to be completed before the end of a lifetime'." Harrington v. Murray, 169 A.D. 2d 580 (1st Dept. 1991)(Unmarried parties had alleged oral agreement whereby defendant agreed to take care of plaintiff for the rest of her life in exchange for her promise to introduce and otherwise promote him socially in order to aid him in business and politics).

Similarly, in Barron v. Jeffer, 131 A.D. 2d 411 (2d Dept. 1987), the Appellate Division found "while we acknowledge that 'an express agreement between unmarried persons living together is as enforceable as thought they were not living together,' such an agreement is still subject to 'the normal rules of contract law' (Morone v. Morone, 50 N.Y. 2d 481, 486). The Plaintiff seeks to enforce an alleged agreement, which is concededly not evidenced by a writing, made by the Defendant 'to support her for the rest of her life' and 'to place the house located at 20 Croton Avenue, Staten Island, New York, in [the] [p]laintiff's name.' We agree with the Defendant that these allegations...should be stricken since they run afoul of the Statute of Frauds, which requires such promises to be in writing in order to be enforceable (see, General Obligations Law Sections 5-701, 5-703...balance of citations omitted). The Plaintiff, however, claims that her performance of the agreement by moving into the house on two

separate occasions and commencing her duties suffices to overcome the statutory requirement of a writing. Assuming, arguendo, that the doctrine of part performance is applicable, we find that 'the circumstances here [alleged] would not suffice, for the asserted part performance is of a character which is not 'unequivocally referable' to the agreement alleged, admitting of explanation without reference thereto...." Baron v. Jeffer, at 413.

DECEDENT'S INSTRUCTIONS TO HIS BANK IN LETTER DATED FEBRUARY 12, 1986

With respect to any conflicts of law issues, given that the alleged written contract appears to have been executed in France although its enforcement is now sought here in the State of New York, there appears to be some understanding between the parties to the effect that French Law would apply. This is not the court's recollection, however. As has been noted, in order to determine which law should apply, the Court is required to examine the applicable provisions under each jurisdiction and may "decline to apply foreign law that would otherwise govern if that law conflicts with the strong public policy of ...New York." Finnish Fur Sales Co. Ltd. v. Juliet Shuloff Furs, Inc., 770 F. Supp. 139 (S.D.N.Y., 1991). "[F]or New York Law to displace foreign law once the latter has been demonstrated to apply, not only must a clear conflict with New York Law be shown, but New York's interest as

reflected in the policy underlying its law must outweigh the interest of the other forum." Ibid, at 143, 144.

The Respondents have submitted the affidavit of their French Law expert and the Petitioner has submitted copies of the French civil code, untranslated, and also refers back to the pre-trial Memorandum of Law she submitted on or about August 26, 1998, which makes reference to French Law and does contain some translations. The translations are done, however, by the Petitioner, rather than an independent translator. The court notes that the Respondent's French Law expert, also does his own translation. The Petitioner appears to be presenting herself as her own French Law expert since no affidavit by an independent source has been submitted.

Each party has also chosen to cite and discuss entirely different sections of the French Civil Code, making it difficult to determine what law applies. Nonetheless, more clearly on point seems to be the Civil Code section cited by Respondents as Article 1130, which provides, in translation, as follows: "Future things can be the subject of a contract. One may not however waive rights to a decedent's estate which is not open, nor make any stipulation regarding such an estate, even with the consent of the one whose estate is concerned." As interpreted by the Respondent's French Law expert, this language appears to mean that the Decedent's handwritten letter to his banker "might be considered a testamentary instrument, that is, instructions to become

effective on his death. However, it would not be considered a completed gift, nor confer upon Ms. Renoir any enforceable interest in the subject account (or against the estate), and Mr. Huyot would have the absolute right to void or cancel such instrument (or the underlying instructions), as he did by his subsequent letter to Mr. Heibling, dated December 15, 1989 (Exhibit B). Furthermore, Mr. Huyot's right to cancel the instructions which are the basis for Ms. Renoir's claim was confirmed by Experta (the bank) both to Mr. Huyot (Exhibit C) and to Ms. Renoir (Exhibit D)." (Exhibit B, Affidavit concerning French Law of John P. Heinzen, dated March 9, 1999, pages 4-5).

In contrast, although it is not as clearly expressed, the Petitioner argues that Decedent's letter to his bank is a "bi-lateral written agreement," and could not be unilaterally revoked under the laws of New York and France.

Under French law, Petitioner asserts, because the sum of money was in Decedent's bank account at the time of the alleged contract and at his death as well, it was "not something to come in the future" as prohibited by Article 1130. (Petitioner's Memorandum of Law, p. 16). She describes this "[irrevocable gift] between a concubine and her companion" [Ibid, p.15; quoting prior Affidavit of Heinzen, Respondent's French Law expert, addressed to "concubinage"] as a "post mortem donation." (Ibid, p.16) Somewhat elliptically, "post mortem donation" is described as follows:

"Donation cause of death. It, to the contrary deviates from the prohibition in what concerns donations to be executed at the death of the donor, it is to say those that confer from their conclusion to the donee an irrevocable right, but where the payment is transferred at the death of the donor, this event completes the part of a 'post mortem donation." (Ibid.)

Petitioner's translation of parts of a treatise on French Law sets forth the following:

"The regime of contracts of common law spouses or cohabitants for a large part, are just a simple application of the common law of contracts." Jean Carbonnier,...says that solutions given in the matter of common law marriage or cohabitation are just applications of the common law...in particular the donation (gift or contract) cannot be revoked unilaterally...The end of common-law marriage or cohabitation does not in itself, influence the contracts in course...After the disappearance of the common-law marriage or cohabitation, the contract continues its life and sometimes even, it is reinforced." (Petitioner's Pre-Trial Memorandum of Law filed August 26, 1998, p.9).

In truth, the above quoted recitations by Petitioner show that there may be in France distinct legal consequences to having made the type of arrangement with his bank that decedent did make concerning this Petitioner who, in France, arguably, would have been in a legal status with the decedent of "concubinage." How this status could not be the equivalent of

common-law marriage, had been discussed earlier by this Court in a prior decision. Matter of Huyot, 169 Misc. 2d 805, aff'd 245 A.D. 2d 513, lv. to app. dism., 91 N.Y. 2d 1002 (1998). Similarly, an alleged "contract" now sought to be enforced in New York is not somehow made more enforceable because of a possible status conveyed in France. Indeed, the Petitioner's discussion of French Contract Law shows it to be in conflict with the general principles of New York Contract Law.

The Respondent's expert, in contrast, asserts that the letter propounded as a contract would not be viewed as such under French Law, and would be voidable at Decedent's discretion as an absolute right.

As noted, this Court has serious reservations as to whether there should be any consideration of French Law, as distinct as it is from our common law traditions. Assuming that it might apply, the court nonetheless, finds that Respondent's expert more adequately explains what that law may be, and that French Law is consistent with an interpretation under New York Law: that this letter was not a completed gift, not an enforceable contract, and was entirely revocable at the Decedent's whim.

Accordingly, the Respondents are granted summary judgment with respect to Petitioner's claim of breach of a written "contract" to give ONE HUNDRED TWENTY-FIVE THOUSAND ($125,000.00) DOLLARS to the Petitioner at Decedent's death.

DECEDENT'S ALLEGED ORAL PROMISE TO MAKE TESTAMENTARY DISPOSITION

For the purpose of a Summary Judgment Motion, it must be assumed that the facts alleged by Petitioner are true: the decedent made an oral promise to leave the Petitioner "the same inheritance as a daughter and... promised to make...[her] the Executrix of his estate." (Page 4, Petition of Bonnie Huyot-Renoir, dated March 29, 1994).

As a matter of law, such a promise is unenforceable, Section 13-2.1 Estates Powers and Trusts Law provides in pertinent part that:

> "(a) Every agreement, promise or undertaking is unenforceable unless it or some note or memorandum thereof is in writing and subscribed by the party to be charged therewith, or by his lawful agent, if such agreement, promise or undertaking...
> (2) Is a contract to make a testamentary provision of any kind."

The alleged oral promise described by the petitioner is in the nature of a "contract to make a testamentary promise" and as such must be in writing to be enforceable or else is in violation of the Statute of Frauds. Estate of Drogin, 144 Misc. 2d 747 (N.Y.Co.Surr.Ct. 1989).

Accordingly, the Respondent's motion for Summary Judgment as to this cause of action is granted.

Decedent's alleged oral promise to give Petitioner $25,000.00 per year for a period of three years. The petitioner claims that decedent made an oral promise in June, 1991, to give her for educational purposes, $25,000.00 a year for three years. Assuming this is true, the promise is nonetheless unenforceable since it is barred by the Statute of Frauds. Section 5-701 General Obligations Law provides:

> "a. Every agreement, promise undertaking is void unless it or some note or memorandum thereof be in writing, and subscribed by the party to be charged therewith or by his lawful agent, if such agreement, promise or undertaking:
> 1. By its terms is not to be performed within one year from the making thereof or the performance of which is not to be completed before the end of a lifetime...."

Petitioner relies on the decision in Morone v. Morone, 50 N.Y. 2d 481 (1980), in which the Court of Appeals found that an express oral partnership agreement between two unmarried persons could be enforceable. It did not say, however, that a promise of the kind alleged by this petitioner was somehow exempted from the requirements of the Statute of Frauds.

Accordingly, the Respondent's Motion for Summary Judgment with respect to this last cause of action is hereby granted and the Petition is dismissed in its entirety.

This decision disposes of all pending matters. Any remaining application is denied.

Settle decree on Notice in conformance with this Decision.

DATED: Carmel, New York
August 16, 1999

William B. Braatz, S.

TO:

Bonnie Huyot-Renoir
187 East 600 North
Midway, Utah 84049

Patricia Anne Lind, Esq.
Vedder, Price, Kaufman & Kammholz
805 Third Avenue
New York, New York 10022

Peter F. DeGaetano, Esq.
488 Madison Avenue
New York, New York 10022

APPENDIX D

STATE OF NEW YORK
COURT OF APPEALS

DECISION May 5, 1998

Motion for leave to appeal dismissed upon the ground that the order sought to be appealed from does not finally determine the proceeding within the meaning of the Constitution.

STATE OF NEW YORK
COURT OF APPEALS

2-10 Mo. No. 246
In the Matter of Robert Huyot,
Deceased.

Bonnie Huyot-Renoir,
Appellant,
Marilese Flusser, et al.,
Respondents.

A motion for leave to appeal to the Court of Appeals in the above cause having heretofore been made upon the part of the appellant herein and

papers having been submitted thereon and due deliberation having been thereupon had, it is

ORDERED, that the said motion be and the same hereby is dismissed upon the ground that the order sought to be appealed from does not finally determine the proceeding within the meaning of the Constitution.

"s/ Stuart M. Cohen, Clerk of the Court

APPENDIX E

PUTNAM COUNTY SURROGATE'S COURT
County Office Building
Two County Center
Carmel, New York 10512

WILLIAM B. BRAATZ
SURROGATE

July 17, 1998

Bonnie Huyot-Renoir
187 East 600 North
Midway, Utah 84049

Re: Matter of Robert Huyot
File No. 171/1993

Dear Ms. Renoir:

This will acknowledge receipt of your letter dated May 21, 1998, addressed to Surrogate

Braatz, Chief Surrogate Court Clerk Bonnie St. Auburn and myself. In your letter you seek advice as to the status of your applications in connection with the above-captioned estate. As you know, one aspect of your claim, your application to elect against the will as a surviving spouse of the above-named decedent, has been disposed of in this Court as well as in the Appellate Division.

From a reading of your original petition, it seems that your claim for breach of contract remains outstanding. Accordingly, the Court has scheduled a conference for August 28, 1998, at 10:00 a.m., in order to set whatever schedule of discovery may be necessary and determine a trial date.

Thank you for your immediate attention.

Very truly yours,

"s/ Joan Eckenwalder Margenot".
Principal Law Clerk to Judge

APPENDIX F

SUPREME COURT OF THE STATE OF NEW YORK
APPELLATE DIVISION:
SECOND JUDICIAL DEPARTMENT

January 13, 2000

DECISION & ORDER ON MOTION

1996-06720

In the Matter of Robert Huyot, deceased.
Bonnie Huyot-Renoir, appellant;
Marilese Flusser, et al., respondents.

Motion by the appellant for reargument of an appeal from a decree of the surrogate's Court, Putnam County, dated June 7, 1996, which was determined by decision and order of this court dated December 22, 1997.

Upon the papers filed in support of the motion and the papers filed in opposition thereto, it is

ORDERED that the motion is denied, with $100 costs.

BRACKEN, J.P., Thompson, Krausman, and Luciano, JJ., concur.

ENTER:

James Edward Pelzer,
Clerk

APPENDIX G

SUPREME COURT OF THE STATE OF NEW YORK, APPELLATE DIVISION: SECOND JUDICIAL DEPARTMENT

Argued-November 14, 1997

_____AD2d_____
LAWRENCE J. BRACKEN, J.P.

WILLIAM C. THOMPSON
GABRIEL M. KRAUSMAN
DANIEL F. LUCIANO, JJ.

96-6720

DECISION & ORDER
December 22, 1997

In the Matter of Robert Huyot, deceased.
Bonnie Huyot-Renoir, appellant;
Marilese Flusser, et al., respondents.

Bonnie Huyot-Renoir, Midway, Ut., appellant *pro se*.

Vedder, Price, Kaufman, Kammholz & Day, New York, N.Y. (Edward F. Campbell, Jr., and Patricia Anne Lind of counsel), for respondents Marilese Flusser, Suzanne Matthau, and Nicole Stevenson.

Peter F. DeGaetano, New York, N.Y., for respondent Giselle Huyot (no brief filed).

In a proceeding, *inter alia*, to assert a right of election pursuant to EPTL 5-1.1-A, the petitioner appeals from a decree of the Surrogate's Court, Queens County (Braatz, S.), dated June 7, 1996, which, *inter alia*, dismissed so much of the petition as was to elect against the will of Robert Huyot.

ORDERED that the decree is affirmed, with costs payable by the appellant to the respondents

Marilese Flusser, Suzanne Matthau, and Nicole Stevenson.

The Surrogate properly concluded that there is a distinction between "marriage" and "concubinage" under French law that is "more than mere language". While the petitioner may enjoy some rights under French law as a result of her past relationship with the decedent, and while some of these rights may be similar or the same as those of married persons in France, these rights do not give the parties the status of husband and wife or make the parties the equivalent of husband and wife (*see, Matter of Jenkins*, 133 Misc 2d 420). The parties were not married under French law and were not each other's spouse. Thus, the petitioner cannot now be deemed a surviving spouse for the purpose of asserting a right of election under New York law (*see*, EPTL 5-1,.1-A). Accordingly, the Surrogate's Court properly dismissed so much of the petition as was to elect against the decedent's will.

BRACKEN, J.P., THOMPSON, KRAUSMAN and LUCIANO, JJ., concur.

ENTER:

Martin H. Brownstein, Clerk

MATTER OF HUYOT, DECEASED

APPENDIX H

SURROGATE'S COURT OF THE STATE
OF NEW YORK, COUNTY OF PUTNAM

In the Matter of the Application of

Bonnie H. Renoir,
a/k/a BONNIE HUYOT-RENOIR,

DECISION
File No.: 171/1993

For a Determination of Her Claims
And Her Right under
5-1.1-A of the Estates, Powers and
Trusts Law to Elect to Take an
Intestate Share Against the Provisions
of the Last Will and Testament of

ROBERT HUYOT,
Deceased

BRAATZ, S.

By Petition filed April 8, 1994, BONNIE H. RENOIR, the Petitioner herein, makes application to elect against the Will of the above-named decedent as a surviving spouse, based upon her

alleged common law marriage to the decedent in Paris, France. In a Decision entered October 24, 1994 this Court stated that the threshold issue of Petitioner's standing to elect against the Will as a surviving spouse based upon an alleged common law marriage to the decedent needed determination. Counsel were directed to submit pre-trial memoranda of law addressed to the issues, including any conflict of laws arguments. A conference was held, and a time frame established for submission of memoranda of law.

Since then, the Court learned that an additional interested person, GISELLE HUYOT, had never been served with notice of the proceeding and, accordingly, the Petitioner was directed to serve a supplemental citation or to file a waiver of citation. A waiver of appearance and authorization of attorney was filed by GISELLE HUYOT in Putnam County Surrogate's Court on February 22, 1996. Additionally, a Notice of Appearance was filed by her attorney, who indicated that he had no intention of submitting papers on the issues presented and asked that the matter be deemed fully submitted.

After carefully reviewing the memoranda submitted and accompanying exhibits, the file maintained by the Surrogate Court Clerk, and the applicable law, the court finds as follows:

FACTUAL BACKGROUND

According to the submitted and uncontroverted affidavits, the Petitioner and the

Decedent lived together in Paris, France, from November 24, 1984 to approximately August, 1988, calling each other husband and wife. From August, 1988 to approximately November 19, 1989 the Petitioner and Decedent lived together in Carmel, New York. On or about November 19, 1989 the Petitioner "was cast out" of the residence in Carmel. After November, 1989 until the Decedent's death on "April 29, 1993 the Petitioner had made "intermittent attempts" to reconcile with Decedent. Respondents have conceded that for the purpose of determining the threshold question of the Petitioner's standing to elect against the Will the Court shall assume the truth of the allegation that Petitioner and the Decedent lived "en concubinage" for a period of time in France and during that time she would have been considered to be the Decedent's concubine under French Law. The relationship was terminated in 1989 against the Petitioner's will and no matrimonial action was ever commenced by either party against the other. The Decedent died on April 29, 1993.

DISCUSSION AND CONCLUSION

Petitioner and Respondent have both submitted affidavits by their respective experts in French law. The Petitioner's expert, JACQUELINE RUBELLIN-DEVICHI, is currently a professor at the University of Jean Moulin in Lyons, France and an expert in Family Law. The Respondent's expert, JOHN P. HEINZEN, is an attorney qualified to practice in the Courts of France and the United

States Supreme Court. He indicates that "a substantial part of...[his] practice has been in the field of marital relations." (Page 1, Affidavit of French Law by JOHN P. HEINZEN, dated March 21, 1995.) One thing the experts appear to agree on is that there is a relationship called "concubinage"[1] which is created by a man and a woman who choose to live together and which is terminable at will.[2]

What both experts have stated-although MS. RUBELLIN-DEVICHI does not analyze the implication of her statements - is that these are distinct relationships with distinct rights attached to them. This is the larger unspoken gloss on those cases in the New York Courts recognizing common law marriages contracted in other jurisdictions: the foreign jurisdictions recognizing common law marriage treat the participants I the same fashion as those who've married formally. "Marriage" is "marriage" for all purposes, including the ability to enter into the relationship [C.f.: Matter of Abbot, 189 A.D.2d 709(2d Dept.1993) decedent could not be common law spouse of claimant since claimant never divorced his wife; thus he could not elect against decedent's Will; and Matter of Benjamin, 34 N.Y.2d 27(1974), since decedent did not divorce common-law spouse prior to ceremonial marriage to another, the common-law spouse was the widow in rival claim for letters of administration; spousal maintenance [Cross v. Cross, 102 A.D.2d 638 (1st Dept. 1984), plaintiff obtained spousal maintenance pendente lite

having established prima facia, that she was the common-law spouse of defendant under laws of Pennsylvania and the District of Columbia]; and death benefits [Matter of Mott v. Duncan Petroleum, 51 N.Y.2d 289 (1980), Workers' Compensation Board directed to apply Georgia Law to determine whether claimant common law spouse of decedent member].

Most compellingly on point is a case decided by the Surrogate in Queens County, Matter of Jenkins, 133 Misc.2d 420 (Queens Co. Surr. Ct. 1986). In Matter of Jenkins, the Petitioner sought to leave to elect against the Will of the decedent alleging she was the surviving spouse based upon an Israeli common law marriage. In determining that the Petitioner could not elect against the Will, the Surrogate stated:

> "the relationship referred to in the two statutes in question and the Israeli statutes in general dealing with the relationship of a man and a woman who are cohabiting in a common household do not create a state of marriage, equivalent to a common law marriage or a ceremonial marriage. The parties are not married and are not each other's spouse. Rather the statutes confer certain rights I Israel. Some of these rights may be similar to or the same as those of married couples but the conferring of these rights does not in Israel give the parties the status of husband and wife." Matter of Jenkins, supra, at 426.

In reaching that determination, the Surrogate examined two Israeli statutes proffered by the parties' experts, setting forth certain rights to which individuals who live together "as husband and wife in a common household" become entitled to, upon the death of the other. Matter of Jenkins, supra, at 421. The experts drew conflicting conclusions as to whether or not the statutory or common law framework in Israel created an ability to enter into a common law marriage in Israel. The Court noted that despite the disagreement of the experts, it was the Court's function to determine the meaning and effect to be given to the statute and the Court "must routinely construe foreign law in the resolution of controversies properly before...[it]' (Zschernig v. Miller, 389 U.S.429, 442, 88 S.C. 664, 671, 19 L.Ed.2d 683)." The Court then set out to define marriage as recognized in the State of New York, including recognition of common law marriages, and compared the applicable provisions of the Israeli Code.

Similarly this court must examine how this relationship would be viewed in France and can only conclude that there is a distinction between "marriage" and "concubinage" that is more than mere language. While the Petitioner may have some rights under French law as a result of the relationship she enjoyed with the decedent, they are not the same rights as those granted to a spouse in France who is a partner in a "legal" marriage. If France does not accord her the same legal status, then how can the State of New York

grant her more rights than those she would be granted in France? She cannot be deemed to be a "surviving spouse" entitled to elect against decedent's Will given that the jurisdiction from which she claims to have arrived at that status does not recognize a true common law marriage equivalent to those recognized by American jurisdictions that do recognize such a form of marriage.

Accordingly, the Petitioner's application to elect against the Will as a surviving spouse of the decedent herein is hereby dismissed.

Settle degree on notice.

DATED: Carmel, New York
May 2, 1996

"s/William B. Braatz
Surrogate

TO:

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Attorney for Giselle Huyot
488 Madison Avenue
New York, New York 10022

---

1 Throughout the translations proffered by the Petitioner the words "en concubinage," "concubine" and "concubin" have been translated as "common law marriage," "common law wife" and "common law husband," respectively. This choice of translation not only begs the question, but makes for distracting reading. The French/English dictionary definition of "concubin" is "1. Concubine; partner. 2. JUR. partner cohabitee," and that of "concubinage" is "1. To live as man and wife, to cohabit. 2. JUR cohabitation, cohabiting; notoire common-law marriage." (Petitioner's Memorandum of Law). Such a dictionary's purpose is to assist the foreign reader or listener in understanding French terms or concepts, many of which have no translation, as any student of colloquialisms would know. Accordingly, the Court has substituted the French words for the selected English translations where they appear in the quoted language from the parties' submissions.

2 The Petitioner indicates in her Reply Memorandum of Law that "there is a common-law divorce procedure, just as there are other regulations of the common law marriage." (P.4, Reply Memorandum). No copies or translations delineating exactly what this procedure is have been submitted.

The Petitioner's expert states that:

"not only is...[concubinage] admitted as a style of conjugality, as encompassing as marriage, or a often give preference to the . . . [concubine], even

still married elsewhere or in other words adulterous over the wife; it's especially true for liberalities (sic). . . " (Page 3, English Translation of the Petitioner's Expert).

Later, MS. RUBELLIN-DEVICHI discusses the effects produced by the concubinage relationship in France. She indicates:

"that the. . . .[concubine] who loses her . . . concubin] at the fault of a third party (car accident, for example) is indemnified as of she was the spouse . . .that the . . .(concubine) has the right to stay in the home (domicile) or to continue in the contract as if she were the spouse. . . . ." (Emphasis added) (Page 3, English Translation of Petitioner's Expert).

"In the matter of social security, health and maternity insurance it is exactly the same for the two categories of the couple, in marriage or out of marriage. . . .[the concubine] is the married wife and married wife are the exact same beneficiaries with the same title (sic). . .[I]t is true that the pension of reversion and the death insurance are not given to the. . .[concubine] in the general regime, but they exist in complimentary regimes; it is false to say that the. . . [concubine] has no rights after a break-up or after the death. If there is a break-up by the fault of the. . . [concubin], there are damages and interest, often very high, to whom is owned or to whom are due; after the death, the courts allocate important or great sums

taking into account the help given by the...[concubine], on the basis of the business principle, of the enrichment without cause, of the DeFacto situation; the . . .(concubine] can use the name of her companion and she can inherit from him. It's true that the rights of succession are raised to 60%, despite the fact that for the spouse, they can obtain 40%, but that is really not proof of the non- recognition of. . . (concubinage)! As much as it is to emphasize that the married woman does not come into the inheritance of the husband if he does not want it, and can perfectly not have rights to anything while the (concubine) comes under the inheritance if the. . .[concubin] has made a Will in her favor." (Page 7-8, English Translation of Petitioner's Expert).

MS. RUBELLIN-DEVICHI concludes as follows: "I very solemnly affirm, considering myself an expert in French Family Law, that our law knows two models of conjugality, marriage and...[concubinage], and that. . . [concubinage] has been recognized for a long time in our law . . In the examined case, BONNIE RENOIR should receive:

> a/the liberality that was given by order of payment, of the living Mr. Huyot, and that is founded more on the perfectly praiseworthy motive that would be very appreciated by French Judges.

B/ In the title of enrichment without cause (of Mr. Huyot, a sum that the Courts would consider an account held to the age and duration of the. . . [concubinage]; in effect, Bonnie Renoir held the place as mistress of the house, helping him in his professional life and worldly activities, as important in the profession that he was in." (Page 8-9, English Translation of Petitioner's Expert).

The Affidavit of French Law submitted by JOHN P. HEINZEN, the Respondents' expert, indicates:

"There is only one form of marriage which can be performed in France. This is the Civil Marriage performed by an "Officier d'Etat Civil" (i.e. the Mayor, one of his deputies of the commune, i.e. township) of which at least one of the spouses is a resident on the date when the bands are posted. . .(Article 165 of the French Civil Code)

. . . The French Civil Codes provides that a marriage can only be terminated by the death of a spouse or a judicially rendered Divorce Decree, (Article 227 of the French Civil Code)

. . .A validly performed marriage creates both rights and obligations in favor and on the part of each spouse, which are set forth in the French Civil Code (Article 203 and following). . .

When two persons cohabit in France without being married, they are said to be living "en concubinage," i.e., as companions.

. . . There are no laws or regulations in France which regulate the status of "concubinage" and each of the companions may terminate the relationship at any time.

Such termination does not require any judicial decree and it does not per se give rise to any claim to alimony or damages on the part of the concubine who is left by her companion.

. . .On the death of her companion, the surviving concubine has no inheritance right or claim whatsoever in her deceased companion's estate unless, and only to the extent, she is named as a legatee in the decedent's Will and even then, the surviving concubine may not be left more than the decedent may leave to any third party. The widow, on the contrary, in addition to her share of the community property, benefits from intestate inheritance rights, the extent of which depends on the presence of children or other relatives of the decedent. (Article 755 and fol. of the French Civil Code).

. . .If the concubine or her companion should be married to someone else during the cohabitation the concubinage relationship is deemed to be adulterous, but no prosecution for

bigamy, a crime under French Law, would be possible.

. . .French law provides that gifts between spouses otherwise than by ante-nuptial agreement are always revocable at any time, while gifts between a concubine and her companion, like gifts between unrelated persons, are irrevocable. . .

. . .The concubinage relationship does not give rise to any patrimonial right, or right to support, in favor of the concubine against her companion or vice-versa. All the concubine may claim are damages in tort if she can prove that the conduct of her companion is wrongful and caused her damage, or damages for breach of contract if he fails to abide by contractual commitments provided such commitments are not legally nul and void as being designed to create, maintain or remunerate the immoral concubinage relationship.

. . .Thus, under French Civil Law, there is neither identity nor similarity between the status of a concubine and that of a married woman." (Affidavit of French Law of Respondents, dated March 21, 1995, pages 2-3).

Neither the Petitioner nor the Respondents has included as part of their exhibits concerning French Law copies of the French Civil Code or, copies of any of the "extensive" decisions apparently discussing the concubinage status

referred to by the Petitioner's expert. Petitioner has primarily submitted excerpts from articles written by her expert concerning Family Law in general and concubinage in particular.

Whether the Decedent and the Petitioner entered into a valid common law marriage is to be determined according to the law of the jurisdiction in which such marriage is purported to have occurred. Matter of Watts, 31 N.Y.2d 491,495 (1973). If France recognizes this relationship as a marriage, then New York may recognize it for estate purposes. The difficulty here, however, is that unlike common law marriages contracted in the states of the United States which continue to recognize common law marriage, and have precise standards for determining whether or not a common law marriage has occurred, the law in France speaks of two distinct types of relationships: "concubinage" and marriage. What both experts have stated - although MS. RUBELLIN-DEVICHI does not analyze the implications of her statements - is that these are distinct relationships with distinct rights attached to them. This is the larger unspoken gloss on those cases in the New York Courts recognizing common law marriages contracted in other jurisdictions: the foreign jurisdictions recognizing common law marriage treat the participants in the same fashion as those who've married formally. "Marriage" is "marriage" for all purposes, including the ability to enter in the relationship (C.f.: Matter of Abbot, 189 A.D. 2d 709 (2d Dept. 1993)

decedent could not be common law spouse of claimant since claimant never divorced his wife; thus he could not elect against decedent's Will; and Matter of Benjamin, 34 N.Y. 2d27(1974), since decedent did not divorce common-law spouse prior to ceremonial marriage to another, the common-law spouse was the widow in rival claim for letters of administration; spousal maintenance Cross v.Cross, 102 A.D. 2d 638 (1st Dept. 1984), plaintiff obtained spousal maintenance pendente lite having established prima facia that she was the common-law spouse of defendant under laws of Pennsylvania and the District of Columbia]; and death benefits [Matter of Mott v. Duncan Petroleum, 51 N.Y.2d 289 (1989), Workers' Compensation board directed to apply Georgia Law to determine where claimant common law spouse of decedent member].

Most compellingly on point is a case decided by the Surrogate in Queens County, Matter of Jenkins, 133 Misc, 2d 420 (Queens Co. Surr. Ct. 1986). In Matter of Jenkins, the Petitioner sought leave to elect against the Will of the decedent alleging she was the surviving spouse based upon an Israeli common law marriage. In determining that the Petitioner could not elect against the Will, the Surrogate stated:

"the relationship referred to in the two statutes in question and the Israeli statutes in general dealing with the relationship of a man and woman who are cohabiting in a common household do not

create a state of marriage, equivalent to a common law marriage or a ceremonial marriage. The parties are not married and are not each other's spouse. Rather the statutes confer certain rights in Israel. Some of these rights may be similar to or the same as those of married couples but the conferring of these rights does not in Israel give the parties the status of husband and wife." Matter of Jenkins, supra, at 426."

In reaching that determination, the Surrogate examined two Israeli statutes proferred by the parties' experts, setting forth certain rights to which individuals who live together "husband and wife in a common household" become entitled to, upon the death of the other. Matter of Jenkins, supra, at 421. The experts drew conflicting conclusions as to whether or not the statutory or common law framework in Israel created an ability to enter into a common law marriage in Israel. The Court noted that despite the disagreement of the experts, it was the Court's function to determine the meaning and effect to be given to the statute and the Court "must routinely construe foreign law in the resolution of controversies properly before . . . (it)' (Axchernig v. Miller, 389 U.S. 429, 442, 88 S.C. 664,671, 19 L.Ed. 2d 683)." The Court then set out to define marriage as recognized in the State of New York, including recognition of common law marriages, and compared the applicable provisions of the Israeli Code.

Similarly this Court must examine how this relationship would be viewed in France and can only conclude that there is a distinction between "marriage" and "concubinage" that is more than mere language. While the Petitioner may have some rights under French law as a result of the relationship she enjoyed with the decedent, they are not the same rights as those granted to a spouse in France who is a partner in a "legal" marriage. If France does not accord her the same legal status, then those she would be granted in France? She cannot be deemed to be a "surviving spouse" entitled to elect against decedent's Will given that the jurisdiction from which she claims to have arrived at that status does not recognize a true common law marriage equivalent to those recognized by American jurisdictions that do recognize such a form of marriage.

Accordingly, the Petitioner's application to elect against the Will as a surviving spouse of the decedent herein is hereby dismissed.

Settle decree on notice.

DATED: Carmel, New York
May 2, 1996

"s/ William B. Braatz
Surrogate

TO:

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At Chambers of the Surrogate's Court of the State of New York held in and for the County of Putnam, at the Courthouse in Carmel, New York, on the 7 day of June, 1996. PRESENT: HON. WILLIAM B. BRAATZ, SURROGATE

FILE NO. 171/1993 DECREE

In the Matter of the Application of
BONNIE H. RENOIR,
a/k/a BONNIE HUYOT-RENOIR,

For a Determination of Her Claims
And her Right under 5-1.1-A of the Estates, Powers and Trusts Law to Elect to Take an

Intestate Share Against the Provisions of the Last Will and Testament of ROBERT HUYOT, Deceased.

Petitioner, Bonnie H. Renoir, having on or about April 8, 1994, filed a verified petition, praying, inter alia, that a decree be entered determining that she is the surviving spouse of Robert Huyot, deceased, and declaring the validity of her election to take against said decedent's Will and that she be entitled to take an elective share of said decedent's estate; and

Satisfactory proof having been made that all interested persons have been duly served with citation theretofore issued in this matter requiring them to show cause before the Surrogate of Putnam County why the relief requested by petitioner should not be granted, or, by acknowledged instruments filed with the Court, have duly waived the service of citation; and

Petitioner, Bonnie Renoir, having appeared herein by her attorney, Donald S. Klein, Esq.; and respondent, Giselle Huyot, having appeared herein by her attorney, Peter V. DeGaetano, Esq.; and respondents, Marilise Flusser, Suzanne Matthau and Nicole Stevenson, individually and as executrices under said decedent's Will, having appeared herein by their attorneys, Vedder, Price, Kaufman, Kammholz & Day, Esq., and filed an answer; and

The matter having duly come before the Court for determination, and the proofs having been duly

taken and the arguments of counsel having been duly heard, and, after due deliberation thereon, the surrogate having filed his decision in writing;

Now, on motion of Vedder, Price, Kaufman, Kammholz & Day, Esqs., attorneys for the said executrices, it is ORDERED, ADJUDGED AND DECREED, that petitioner, Bonnie Renoir, is not the surviving spouse of Robert Huyot, deceased; and it is further ORDERED, ADJUDGED AND DECREED, that the purported notice of election by petitioner, Bonnie Renoir, is a nullity, and that her application to elect against the will of Robert Huyot, deceased, is hereby dismissed with prejudice; and it is further ORDERED, ADJUDGED AND DECREED, that the fixation of the amount of any allowance or grant of costs against petitioner, Bonnie Renoir, be reserved for supplemental decree to be entered after the time to appeal has expired or, if an appeal be taken, after final determination of the appeal.

"s/William B. Braatz

STATE OF NEW YORK)
COUNTY OF PUTNAM)
SURROGATE'S COURT)

File No. 171/1993

I, BONNIE K. ST. AUBURN, Clerk of the Surrogate's Court of said County of Putnam, do hereby certify that I have compared the foregoing

copy of Decree entered the 7th day of June, 1996 with the original Decree thereof now remaining in this office, and have found the same to be a correct transcript therefrom, and the whole of said original. IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed the Seal of the Surrogate's Court of said County, this 24th day of June, 1996.

"s/Bonnie K. St. Auburn
Clerk of the Surrogate's Court

APPENDIX I

The following sections are when FEDERAL AND CONSTITUTIONAL QUESTIONS WERE RAISED. Only two out of the eight times the Constitutional Questions were raised are shown here. The remaining seven are summarized in the Writ.

1. SURROGATE'S COURT OF THE STATE OF NEW YORK, COUNTY OF PUTNAM, December 23rd, 1996, Brief of Petitioner-Appellant, pages 43-46.

THE ABOLISHMENT OF COMMON LAW MARRIAGES BY THE STATE OF NEW YORK IS UNCONSTITUTIONAL

In 1933, the New York State Legislature abolished the recognition of common law

marriage. Their main reason was their fear of spurious claims. They did create a "safety net" to recognize a few common law marriages. They said that they would recognize a common law marriage if the couple lived in a state or country that recognized common law marriages and upon returning to New York, New York Law would then recognize the marriage as valid. According to Bonnie's research, even when a couple lived in a state or country that recognizes Informal Marriage, and returns to New York, in most cases that she has studied, common-law wifes and husbands, are still denied any legal rights. The "safety net" approach isn't really working. Here are a few examples, 1) The Erlanger case, 2) The William Hurt and Sandra Jennings case, 3) The Jenkins case, and 4) the present Huyot-Renoir case. In the William Hurt and Sandra Jennings case the couple lived in South Carolina, a state that recognizes common law marriage and then moved back to New York. They have a child and Mr. Hurt abandoned them. Ms. Jennings was denied equitable distribution. The Jenkins couple lived in Israel as husband and wife and the common law husband died in New York. Israel recognizes common law marriage. It is called, "reputed marriage." Bonnie and Robert lived in France for four years, and approximately two years in New York, as husband and wife. France recognizes common law marriage. Robert died in New York and she was denied all rights by the Surrogate

Court of Putnam, although she could win in the present appeal.

It is apparent that spouses living in the state of New York are being denied Equal Protection of the Law, Due Process and are being seriously discriminated against. Equal Protection of the Law, as defined by Black's Law Dictionary, Second Edition, pp. 337, 500, 501 is:

> "The constitutional guarantee of "equal protection of the laws" means that no person or class of persons *shall be denied the same protection of the laws* which is *enjoyed by other persons or other classes in like circumstances* in their lives, liberty, property, and in their pursuit of happiness. People v. Jacob, 27 Cal. App. 3d 246, 103 Cal. Rptr.

The Fourteenth Amendment, U.S. Constitutional Doctrine simply means that *similarly situated persons must receive similar treatment under the law.* Dorsey v. Solomon, D.C.Mc.435 F. Supp. 725, 733. Due Process of Law is, "Aside from all else, "due process means fundamental fairness and substantial justice." Vaughn v. State, 3 Tenn. Crim. App. 54,456 S. W. 2d 879.

Discrimination according to Black's Law Dictionary (pp. 500-501) is:

"In Constitutional law, the effect of a statute or established practice which confers particular

priviledges on a class arbitrarily selected from a large number of persons, all of whom stand in the same relation to the priviledges granted and between whom and those not favored *no reasonable distrinction can be found between those favored and those not favored.* Baker v. California Land Title Co. D.C. Cal., 349 F Supp. 235,238,239."

The only distinction between a formal marriage and an Informal. DeFacto, or Common Law marriage is a piece of paper. Everything else is the same. The law abolishing the recognition of common law marriages in New York should be changed, like the State of Utah has done. The State of Utah recognizes common law marriage since 1989. The eminent senior dean of French Family Law, M. Jean Carbonnier says that there should be a universal statute recognizing common law marriage. "Adam and Eve, were they married?" ("Les Concubinages," vol. 1, p.1) If one believes in Adam and Eve, then the original marriage was common law.

APPENDIX J

2. PETITONER'S MOTION FOR PERMISSION TO APPEAL TO THE COURT OF APPEALS OF THE STATE OF NEW YORK, January 26th, 1998

(e) Appellant advocates reform of New York's abolishment of the recognition of common law marriage with the 'safety net clause,' to recognize all valid common law marriages, because the New York State Statute as it stands violates equal protection.
(g) Is there New York case authority for Appellant to add two legal theories on appeal, Marriage by Equitable Estoppel, or Marriage by Presumption, and the unconstitutionality of the abolishment of the recognition of common law marriage?
(h) Should New York reform the state statute abolishing the recognition of common law marriage with the 'safety net clause' and recognize all valid common law marriages because it is arbitrary and violates equal protection?

In 1933, New York abolished the recognition of common law marriage and included a 'safety net clause' to recognize valid common law marriages from other jurisdictions that recognize such marriages. Amendment to 11 of the Domestic Relations Laws 1933, ch. 606. I will prove that the New York State Statute as it stands is *unconstitutional, in violation of the equal protection clause of the Fourteenth Amendment.* Since the early 1900's, over one hundred common law marriages have been brought before the New York Courts. They continue to be presented at the rate of approximately three per year. The New York State Statute as it stands is producing many unjust results. Furthermore, my case should be

used as a precedent for the legal theory of Marriage by Equitable Estoppel. My goal is to improve the law, with more equality in Family Law. Those living in the state of Formal and Informal marriage are in similar circumstances and deserve equal protection of the law. The Court of Appeals should allow this appeal.

New York's Abolishment of the Recognition of Common Law Marriage is Unconstitutional

In 1933, the New York State Legislature abolished the recognition of common law marriage and included a 'safety net clause' to recognize valid common law marriages from other jurisdictions. They felt that while the doctrine of common law marriage works substantial justice in certain cases, they feared spurious claims. NY Civ. Rts. Law Secs 80a to 84 (McKinney Supp 1984).

In Trimble v. Gordon, (1977) 430 US 762, 52 L ed, Deta Mona Trimble was the illegitimate child of a man that was murdered, leaving as his entire estate, a 1974 Plymouth worth approximately $2,500.00. Deta Mona requested heirship and both the Illinois Probate Court and the State Supreme Court stated that she had no legal rights because she was illegitimate. The State of Illinois denied illegitimate children equal protection of the law because they feared spurious claims. Deta Mona appealed to the United States Supreme Court. The Court held that a state's fear of spurious claims is not a compelling enough state

interest to override the guarantees of the equal protection clause of the Fourteenth Amendment. The United States Supreme Court ruled in Deta Mona's favor in a 5 to 4 vote. The Court held that illegitimate and legitimate children are in similar circumstances and deserve equal protection of the law. I respectfully submit that the New York State Legislature's fear of spurious claims in common law marriage cases is also not a compelling enough state interest to override the equal protection clause. Accordingly, I believe that those living in the state of Formal and Informal/common-law marriage are in similar circumstances and deserve equal protection of the law.

The most precious thing in life is a husband, a wife, a child, a mother, a father. There is no legitimate state purpose in statutory discrimination between common law and formally married spouses.

I believe that New York's abolishment of the recognition of common law marriage is unconstitutional and should be amended to recognize all valid common law marriages. (Appellant's B. p. 43, 43, Reply of Appellant, p. 2,3,4,5,6,7)

There are six more Briefs and Memorandums of Law raising the two Constitutional questions, the decisions of the U.S. Supreme Court regarding common-law marriage, the decisions of the European Court of Human Rights, Articles 8 and

14 of the European Convention for the Protection of Human Rights and Fundamental Freedoms, which bind France, the French Civil Codes, and cases decided by French judges, from 1996 until the last Motion for Permission for Leave to Appeal to the Court of Appeals of the State of New York in 2001.